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8 RONALD BRATTON,
9 Plaintiff,

10 v.
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13 WARDEN RON BROOMFIELD, et al.,
14 Defendants.
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16 Case No. 20-03885 BLF (PR)
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18 **ORDER DISMISSING AMENDED
COMPLAINT WITH LEAVE TO
AMEND; DENYING MOTION FOR
APPOINTMENT COUNSEL;
DENYING MOTION FOR
EMERGENCY INJUNCTION**
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20 (Docket No. 15)
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22 Plaintiff filed the instant *pro se* civil rights action pursuant to 42 U.S.C. § 1983
23 against prison officials and staff at San Quentin State Prison (“SQSP”) where he is
24 currently incarcerated. Dkt. No. 1. The Court dismissed the complaint with leave to
25 amend to correct deficiencies in the pleading, then dismissed the matter when Plaintiff did
not respond in the time provided. Dkt. Nos. 9, 10. The Court subsequently found good
cause and granted Plaintiff’s request to reopen the action after receiving his amended
complaint. Dkt. No. 14. The Court now proceeds with an initial review of the amended
complaint below. Dkt. No. 12.
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DISCUSSION

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A. Standard of Review

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A federal court must conduct a preliminary screening in any case in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity. *See 28 U.S.C. § 1915A(a)*. In its review, the court must identify any cognizable claims and dismiss any claims that are frivolous, malicious, fail to state a claim upon which relief may be granted or seek monetary relief from a defendant who is immune from such relief. *See id. § 1915A(b)(1),(2)*. Pro se pleadings must, however, be liberally construed. *See Balistreri v. Pacifica Police Dep’t*, 901 F.2d 696, 699 (9th Cir. 1988).

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To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential elements: (1) that a right secured by the Constitution or laws of the United States was violated, and (2) that the alleged violation was committed by a person acting under the color of state law. *See West v. Atkins*, 487 U.S. 42, 48 (1988).

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B. Plaintiff’s Claims

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In the original complaint, Plaintiff was suing for the denial of a reasonable accommodation request for single-cell status based on his serious medical needs and pre-existing conditions that placed him at a higher risk for COVID-19. Dkt. No. 1. He sought injunctive relief so that he is not forced to be double-celled during this “life threatening crisis period.” *Id.* at 3. Plaintiff made no allegation that he was not receiving proper treatment for his serious medical needs. Rather, he was purely concerned for possible exposure to COVID-19 due to his pre-existing conditions. The Court construed the allegations as an attempt to state a claim under the Eighth Amendment claim for unsafe prison conditions. Dkt. No. 9 at 2.

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The Constitution does not mandate comfortable prisons, but neither does it permit inhumane ones. *See Farmer v. Brennan*, 511 U.S. 825, 832 (1994). The treatment a prisoner receives in prison and the conditions under which he is confined are subject to scrutiny under the Eighth Amendment. *See Helling v. McKinney*, 509 U.S. 25, 31 (1993).

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1 A prison official violates the Eighth Amendment when two requirements are met: (1) the
2 deprivation alleged must be, objectively, sufficiently serious, *Farmer*, 511 U.S. at 834
3 (citing *Wilson v. Seiter*, 501 U.S. 294, 298 (1991)), and (2) the prison official possesses a
4 sufficiently culpable state of mind, *id.* (citing *Wilson*, 501 U.S. at 297). The requisite state
5 of mind to establish an Eighth Amendment violation depends on the nature of the claim.
6 In prison-conditions cases, the necessary state of mind is one of “deliberate indifference.”
7 See, e.g., *Farmer*, 511 U.S. at 834 (inmate safety); *Helling*, 509 U.S. at 32-33 (inmate
8 health); *Wilson*, 501 U.S. at 302-03 (general conditions of confinement); *Estelle v.*
9 *Gamble*, 429 U.S. 97, 104 (1976) (inmate health).

10 Even if the Court assumed that Plaintiff satisfied the first element for an Eighth
11 Amendment claim, the allegations were still deficient with respect to the second element,
12 because Plaintiff failed to allege that each named defendant acted with deliberate
13 indifference. He named as defendants various SQSP employees: C. Young, Ron
14 Broomfield, Dr. M. Rowe, R. Downey, M. Dahl, V. Bolden, Daniel A. Smith, E. Tootell,
15 S. R. Albritton, Dr. S. Garrigan, Dr. Sandler, A. Maxfield, and Nicole Smith. Dkt. No. 1 at
16 2. However, nowhere in his statement of claim did he describe the individual actions of
17 any of these defendants to establish that they were personally involved in the alleged
18 deprivation, or much less that they each acted with deliberate indifference.

19 In preparing an amended complaint, Plaintiff was advised to keep the following
20 principles in mind. Dkt. No. 9 at 3. Liability may be imposed on an individual defendant
21 under § 1983 only if Plaintiff can show that the defendant proximately caused the
22 deprivation of a federally protected right. See *Leer v. Murphy*, 844 F.2d 628, 634 (9th Cir.
23 1988); *Harris v. City of Roseburg*, 664 F.2d 1121, 1125 (9th Cir. 1981). A person deprives
24 another of a constitutional right within the meaning of section 1983 if he does an
25 affirmative act, participates in another’s affirmative act or omits to perform an act which
26 he is legally required to do, that causes the deprivation of which the plaintiff complains.
27 See *Leer*, 844 F.2d at 633.

1 Plaintiff's amended complaint alleges that Defendants were deliberately indifferent
2 for failing to protect him from the risk of COVID-19 infection as an elderly ADA patient
3 who is immunocompromised due to "chronic lymphocytic leukemia" and T.B. Dkt. No.
4 12 at 3. Plaintiff alleges that he has repeatedly requested single-cell housing since the
5 coronavirus has been circulating. *Id.* He was forced to house with another inmate on April
6 27, 2020, and then a different inmate on June 4, 2020. *Id.* Then on June 28, 2020,
7 Plaintiff claims he was "pronounced positive for covid." *Id.* Plaintiff seeks injunctive
8 relief and damages. *Id.* at 5.

9 As before, even if the Court assumes that Plaintiff satisfies the first element for an
10 Eighth Amendment deliberate indifference claim, his allegations are deficient because he
11 again fails to satisfy the second element, i.e., that each named defendant acted with
12 deliberate indifference. He provides the same list of Defendants as in his original
13 complaint: C. Young, ADA Coordinator; Ron Broomfield, Warden; Dr. M. Rowe,
14 Physician & Surgeon; R. Downey, staff psychologist-clinical; M. Dahl, Correctional
15 Counselor II Appeals; V. Bolden, ADA Office Technician; Daniel A. Smith, MD Chief
16 Physician & Surgeon; E. Tootell, Chief Medical Executive; S. R. Albritton, ADA
17 Coordinator; Dr. S. Garrigan, Chief Physician & Surgeon; Dr. Sandler, Psychologist-
18 Clinical; A. Maxfield, Correctional Counselor II Appeals Coordinator; and Nicole Smith,
19 Staff Service Analyst. Dkt. No. 12 at 2; *compare with* Dkt. No. 1 at 2. However, as with
20 the original complaint, nowhere in the statement of claim of the amended complaint does
21 Plaintiff describe the individual actions of any of these named defendants to establish that
22 they were each personally involved in the alleged deprivation, or much less that they each
23 acted with deliberate indifference.

24 Plaintiff shall be afforded one final opportunity to file a second amended complaint
25 in which he must allege sufficient facts describing each named defendant's actions or
26 failure to act that caused the violation of his Eighth Amendment rights. If Plaintiff fails to
27 correct this deficiency after being granted a second opportunity to amend, the Court must

1 dismiss the action for failure to state a claim.

2 **C. Motion for Appointment of Counsel**

3 Plaintiff again moves for appointment counsel based on his indigency, complexity
4 of the issues, need for discovery, limited access to law library and other resources, and
5 limited legal knowledge or experience. Dkt. No. 12 at 11-14. Plaintiff has already been
6 advised that there is no constitutional right to counsel in a civil case unless an indigent
7 litigant may lose his physical liberty if he loses the litigation. *See Lassiter v. Dep't of*
8 *Social Services*, 452 U.S. 18, 25 (1981); *Rand v. Rowland*, 113 F.3d 1520, 1525 (9th Cir.
9 1997) (no constitutional right to counsel in § 1983 action), *withdrawn in part on other*
10 *grounds on reh'g en banc*, 154 F.3d 952 (9th Cir. 1998) (en banc). The decision to request
11 counsel to represent an indigent litigant under § 1915 is within “the sound discretion of the
12 trial court and is granted only in exceptional circumstances.” *Franklin v. Murphy*, 745 F.2d
13 1221, 1236 (9th Cir. 1984). Here, the challenges described by Plaintiff are no different
14 from those faced by other prisoner-litigants. Accordingly, Plaintiff’s motion is **DENIED**
15 without prejudice for lack of exceptional circumstances. *See Agyeman v. Corrections*
16 *Corp. of America*, 390 F.3d 1101, 1103 (9th Cir. 2004); *Rand*, 113 F.3d at 1525 (9th Cir.
17 1997); *Terrell v. Brewer*, 935 F.2d 1015, 1017 (9th Cir. 1991); *Wilborn v. Escalderon*, 789
18 F.2d 1328, 1331 (9th Cir. 1986). This denial is without prejudice to the Court’s *sua sponte*
19 appointment of counsel at a future date should the circumstances of this case warrant such
20 appointment.

21 **D. Motion for Emergency Injunction**

22 Plaintiff has filed a motion for status of this case and an “emergency preliminary
23 injunction to single-cell.” Dkt. No. 15.

24 “A plaintiff seeking a preliminary injunction must establish that he is likely to
25 succeed on the merits, that he is likely to suffer irreparable harm in the absence of
26 preliminary relief, that the balance of equities tips in his favor, and that an injunction is in
27 the public interest.” *Winter v. Natural Resources Defense Council, Inc.*, 555 U.S. 7, 20

1 (2008). Where the court concludes the movant has failed to show a likelihood of success
2 on the merits, the court, in its discretion, need not consider whether the movant would
3 suffer irreparable injury. *Guzman v. Shewry*, 552 F.3d 941, 948 (9th Cir. 2009).

4 An injunction is binding only on parties to the action, their officers, agents,
5 servants, employees and attorneys and those “in active concert or participation” with them.
6 Fed. R. Civ. P. 65(d). In order to enforce an injunction against an entity, the district court
7 must have personal jurisdiction over that entity. *In re Estate of Ferdinand Marcos*, 94
8 F.3d 539, 545 (9th Cir. 1996). The court should not issue an injunction that it cannot
9 enforce. *Id.*

10 Plaintiff has failed to establish the first requirement for an injunction, i.e., likelihood
11 of success on the merits. *See Winter*, 555 U.S. at 20. The Court has found the amended
12 complaint is deficient because Plaintiff has failed to allege sufficient facts establishing that
13 any named defendant caused a violation of his Eighth Amendment rights. *See supra* at 4.
14 Furthermore, without a cognizable claim, the Court cannot determine if it has jurisdiction
15 over any party to enforce such an injunction. *See In re Estate of Ferdinand Marcos*, 94
16 F.3d at 545. Accordingly, the motion must be denied. Dkt. No. 15.

17 18 CONCLUSION

19 For the reasons state above, the Court orders as follows:

20 1. The amended complaint is **DISMISSED with leave to amend**. Within
21 **twenty-eight (28) days** from the date this order is filed, Plaintiff shall file a second
22 amended complaint using the court’s form complaint to correct the deficiencies described
23 above. The second amended complaint must include the caption and civil case number
24 used in this order, *i.e.*, Case No. C 20-03885 BLF (PR), and the words “**SECOND**
25 **AMENDED COMPLAINT**” on the first page. Plaintiff must answer all the questions on
26 the form in order for the action to proceed. Plaintiff is reminded that the second amended
27 complaint supersedes the original and first amended complaints, and Plaintiff may not

1 make references to either complaint. Claims not included in the second amended
2 complaint are no longer claims and defendants not named in an amended complaint are no
3 longer defendants. *See Ferdik v. Bonzelet*, 963 F.2d 1258, 1262 (9th Cir.1992).

4 **Failure to respond in accordance with this order by filing a second amended
5 complaint in the time provided will result in the dismissal of this action without
6 prejudice and without further notice to Plaintiff.**

7 2. Plaintiff's motion for appointment of counsel is **DENIED** without prejudice.

8 3. Plaintiff's motion for an emergency injunction is **DENIED**. Dkt. No. 15.

9 4. The Clerk shall include two copies of the court's form complaint with a copy
10 of this order to Plaintiff.

11 This order terminates Docket No. 15.

12 **IT IS SO ORDERED.**

13 **Dated: December 29, 2021**


BETH LABSON FREEMAN
United States District Judge

United States District Court
Northern District of California

25 Order Dism. Am. Compl with LTA; Denying Other Motions
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